

PATENT
10/015,266**D. REMARKS**

The Office Action dated August 27, 2004 finally rejects claims 1-5, 7-18, 20-26, 28-30 and 34-36 under claim rejections based on 35 USC 103(a) and allows claims 31-33. Applicants request withdrawal of the finality of the Office Action dated August 27, 2004 for consideration of newly added claims dependent upon allowed claims 31-33.

First, Applicants note the addition of claims 37-45, which are dependent upon allowed claims 31-33, and request entry and allowance of these dependent claims. In particular, claims 37, 40, and 43 include the teaching that the "authenticated caller identifier comprises an identifier for a device which compares a current voice sample provided by the caller with a previously stored voice sample for said caller to authenticate an identity of said caller" which among multiple teachings, finds basis in the specification on p. 17, lines 28-p. 18, line 26 and p. 19, lines 3-6 and 19-30. In addition, claims 38, 41, and 44 include the teaching that "on hold statistics specify on hold activity statistics of a caller accumulated from participation in on hold activities comprising at least one from among idleness, participation in surveys, participation in competitions, listening to music, and accessing a third party service" which among multiple teachings, finds basis in the specification on p. 35, lines 14-20. Further, claims 39, 42, and 45 include the teaching of "receiving said request for said caller profile according to said authenticated caller identifier at said caller profile server via a media gateway, wherein said caller profile server is accessible within an internet based network that interfaces with said plurality of call centers which are accessible within a telephony network through said media gateway, wherein said media gateway supports a plurality of protocols for communication between said internet based network and said telephony network" which among multiple teachings, finds basis in the specification on p. 15, line 15 – p. 16, line 6.

In addition, Applicants respectfully request withdrawal of the finality of the Office Action dated August 27, 2004 and review and allowance of amended claims 1, 14, and 25, or in the alternative entry of the amendments to claims 1, 14, and 25 prior to appeal. In particular, Applicants amend claims 1, 14, and 25 to include the limitation of "adjusting an output interface

AUS920010825US1

19

PATENT
10/015,266

to which said wait time is output based on an amount of time remaining in said wait time, wherein at a first amount of time remaining in said wait time said wait time is output to a first output interface and at a second amount of time remaining in said wait time said wait time is output to a second output interface.” This limitation has basis in the specification on p. 27, lines 7-24. Applicants note that the specification gives examples of a first output interface of personal computer system and a second interface of the telephony device, where output interfaces may also include display interfaces, text messaging interfaces, video and audio interfaces, and may further include electronic mail or instant messaging servers tied into the authenticated caller identifier. Applicants also note that the prior art cited against claims 1, 14, and 25 under 103(a) (Shtivelman (US 6,157,655) in view of Duncan et al. (US 2002/0141561) and Barber et al (US 6,088,435)) does not teach or suggest adjusting the output interface at which wait times are displayed based on the amount of wait time remaining.

Further, Applicants note that Applicants’ representative, Amy Pattillo, and Examiner Ubiles discussed a challenge to the finality of the Office Action dated August 27, 2004 based on Applicants filing a declaration under 37 CFR 1.131 antedating the invention date for the present application to a date prior to the priority dates for Duncan et al. and Timmins et al. Applicants’ representative noted that both Duncan et al. and Timmins et al. were both filed after the present application, but are continuations-in-part of pending, but not published, patent applications, and as such, Applicants are unable to investigate which portions of the continuations-in-part benefit from the parent applications.¹ Only those portions of the continuation-in-part that were also included in the originally filed application can claim the priority date of the original application. 35 USC 120. Therefore, Applicants request withdrawal of the finality of the Office Action in

¹ Regarding Duncan et al, the application was filed on February 25, 2002. The present application was filed on December 12, 2001, preceding the Duncan filing date, and excluding Duncan et al from qualifying as prior art under any section of 35 USC 102. In particular, because Duncan et al’s filing date follows the filing date of the present application, Duncan does not qualify as prior art under 35 USC 102(a), (b), or (e) and there is no indication of a foreign filing priority. Duncan et al. is a continuation-in-part of a pending, but not published, patent application filed April 12, 2000.

Regarding Timmins et al, the application was filed on March 31, 2003. Again, the present application was filed on December 12, 2001, preceding the Timmins filing date and excluding Timmins et al from qualifying as prior art under any section of 35 USC 102. Timmins et al is a continuation in part of applications 09/865,230 filed on May 25, 2001 and 10/323,287 filed on December 19, 2002, however, again these patents are not published and therefore Applicants are not able to investigate which portions of the continuation in part benefit from the May 25, 2001 filing date.

AUS920010825US1

20

PATENT
10/015,266

view of prior art that is contingent upon a showing of benefit from a pending, but unpublished, patent application so that Applicants can determine which, if any, portions of the present application need to be antedated.


Additionally, in view of allowed claims 31-33, Applicants request entry of the amendments to the specification presented above. In particular, the amendments to the specification, correct typographical errors that occurred in the originally filed application when the document was converted from one computer to another and merely correct punctuation that might cause confusion.

Conclusion

In conclusion, Applicants respectfully request the withdrawal of the finality of the Office Action dated August 27, 2004 pending the availability of the parent applications to Duncan et al. and Timmons et al. In addition, Applicants respectfully request entry and allowance of dependent claims 37-45 and request entry and allowance of amended claims 1, 14, and 25. Applicants invite the Examiner to set-up a phone conference or call at any time to discuss any of the issues raised in this paper.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,

 10/26/2004

Amy J. Pattillo
Registration No. 46,983
P.O. Box 161327
Austin, Texas 78716
(512) 402-9820
ATTORNEY FOR APPLICANTS

AUS920010825US1

21